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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

MARK UP STATEMENT
IN SUPPORT OF
JACKSON LEE AMENDMENT TO
H.R. 1215
"PROTECTING ACCESS TO CARE ACT OF 2017"

(To exempt claims alleging an irreversible injury.)

FEBRUARY 28, 2017

- Mr. Chairman, I have an amendment at the desk.

- Thank you Mr. Chairman for recognizing me to speak in support of the Jackson Lee Amendment to H.R. 1215, the "Protecting Access to Care Act of 2017."

- I urge my colleagues not to support H.R. 1215, the so-called "Protecting Access to Care Act of 2017."

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1215 OFFERED BY MS. JACKSON LEE OF TEXAS

Page 12, line 7, insert after "or local government;" the following: "which alleges an irreversible injury;".

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- I am concerned that this bill would put patient safety at higher risk, by significantly undermining the accountability of those who provide patients with medical care.

- This legislation would impose various restrictions on medical malpractice lawsuits, causing these restrictions to apply regardless of how much merit a case may have, the negligence at issue, or the severity of the issue.

- Specifically, H.R. 1215 would preempt state law in all 50 states with a rigid, uniform set of rules designed to make it more difficult for malpractice victims to obtain relief in the courts.

- Preventable medical errors are the third-leading cause of death in the United States, behind only cancer and heart disease, with an estimated 440,000 deaths each year following a medical error or hospital-caused infection during a hospital stay.

- Addressing this problem must be a national priority.

- And although policies to promote and require safer practices are key to this effort, that is insufficient.

- The Jackson Lee Amendment would exempt the claims of victims who allege an irreversible injury from the bill's purview.

- The amendment protects victims filing medical malpractice, tort-based legal claims for damages arising out an irreversible injury caused by a health care provider.

- Victims injured by the negligent conduct of others, who have lost limbs, suffered traumatic brain injury, or may be unable to see following medical procedures should not be subject to

additional burdens of a possible limited recovery, currently available under state patients' bills of rights and protections under the Affordable Care Act.

- Current provisions of the Affordable Care Act, legislation protecting patient's rights, prohibit insurance companies from denying coverage for preexisting conditions, mandate coverage for adult children under the age of 26, and secure lifetime coverage caps, ensuring patients receive the care they need.

- Empirical research has shown that caps on damages; however, such as those envisioned by H.R. 1215, diminish access to the courts for the most vulnerable, such as low wage earners, like the elderly, children, and women.

- If economic damages are minor and noneconomic damages are capped, victims are less likely to be able to obtain counsel to represent them in seeking redress.

- Those affected by caps on damages are the patients who have been most severely injured by the negligence of others.

- These patients who reside in communities around the country should not be told that, due to an arbitrary limit set by members of Congress in Washington, DC, they will be deprived of the compensation determined by a fair and impartial jury.

- The courts already possess and exercise their powers of remittitur to set aside excessive jury verdicts, and that is the appropriate solution rather than an arbitrary cap.

- We cannot assign a government monitor to every hospital operating room and every doctor's office.

- Effective protection should also include enabling patients and their families to hold health care providers accountable for errors that cause harm. H.R. 1215 would unfortunately take several major steps backward from this goal.

- The bill twists an important protection found in many state laws into an additional legal hurdle.

- This protection allows patients who do not discover their injury until much later, sometimes many years after the medical procedure or intervention, to still have a change to seek legal help.

- But in the bill, the limited three-year period in which an injured patient can seek legal help is actually further shortened if the patient discovers the injury before that time – to one year.

- The bill cuts off a patient injured as a young child if their family fails to bring legal action on their behalf, long before they are old enough to legally act on their own behalf – at age 8.

- The bill arbitrarily caps so-called "non-economic loss" – which sweeps in essentially everything that is not loss of salary or additional medical expenses –at $250,000 for the patient's lifetime, punishing patients with the most devastating, life-altering injuries.

- The bill undercuts patients in situations in which carelessness or misconduct by several health care providers combines to injure the patient.

- It arbitrarily "divides" blame among those actors and then if one of them evades accountability for any reason, the others who caused the injury are excused from having to make up the difference, and the injured patient is short-changed.

- The bill shifts accountability away from the careless health care providers who caused the injury and onto "collateral sources," such as the patient's insurance company or employer, or the government, that pay for part of the patient's medical expenses or other expenses resulting from the injury.

- In effect, these other sources provide involuntary free insurance to careless health care providers.

- The bill forces the injured patient to take the amounts received for future expenses resulting from the injury in a "structured settlement," which may not match up with the patient's actual needs as they arise, and would further reduce the amount the careless health care provider actually pays.

- The bill excuses doctors and other health care providers from any responsibility of looking into the safety and effectiveness of any medication or medical product, so long as it has been approved by the FDA.

- Under the bill, this also includes medications and products "cleared" by the FDA, which could include medications and products brought to market without undergoing any formal FDA consideration.

- The definitions in H.R. 1215 are written in such vague and broad language as to potentially sweep in not only doctors and other medical professionals, hospitals and clinics, but also every entity that contributes in any way to making any health care product or service available, including insurance companies, pharmaceutical manufacturers, health product manufacturers, pharmacists, nursing homes, assisted living facilities, and mental health treatment centers, and drug and alcohol rehabilitation facility, among others.

- H.R. 1215 will do nothing to strengthen protections for patients.

- It goes in the opposite direction, by excusing the health care industry from accountability for carelessness, and shifting the burden for shouldering the consequences of preventable medical injury to the injured patients, their families, their employers, their insurance companies, and taxpayers.

- Accordingly, I strongly oppose H.R. 1215 for these and many more reasons and urge my colleagues to reject this bill.

- Thank you, I yield back the balance of my time.